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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/583,638
Filing Date: March 26, 2007
Appellant(s): EIERMANN ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 16, 2010 appealing from the Office action mailed June 24, 2010.

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(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,617,885	CENTIS	4-1997
EP 0546348	TABASSO	6-1993
DE 19835722	ANDREA	2-2000
5,606,878	ARREGHINI	3-1997
6,432,216	THIES	8-2002
EP 0607628	FUMAGALLI	7-1994
4,518,599	JOHNSTON	5-1985
3,872,013	NISHINO	3-1975

Perry's Chemical Engineering Handbook. Pages 8-71 through 8-78.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 22, 24, 25, 27, 28, 32, 33, 35, 38-40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter ‘885) in view of Tabasso (EP 0546348, hereinafter EP ‘348).

Claim 22: ‘885 teaches a dishwasher [abstract] that carries out a washing program from a washing process using rinsing water [col. 1, lines 5-9; col. 2, lines 40-47], comprising a program controller [col. 2, lines 28-29 and 51-54], a washing container [(1), Fig. 1; col. 1, lines 60-62], a system for circulating the rinsing water [(3, 4, 14, 11, 13), Fig. 1; col. 1, line 60 – col. 2, line 19], and a storage reservoir [(11), Fig. 1; col. 2, line 4]. ‘885 does not teach that the storage reservoir is embodied as a film bag. However, EP ‘348 teaches a similar dishwasher for recovering, storing, and returning rinse water for further use during various phases of a washing process by using a flexible bag as a storage reservoir because using bag-like reservoirs takes up minimum space [Figs. 1 and 2; abstract; col. 1, line 47-55; col. 2, lines 29-39; col. 3, lines 28-31].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flexible bag reservoir taught by EP ‘348 as the reservoir of ‘885 with a reasonable expectation of success because EP ‘348 teaches that it is known to use a flexible bag for recovering, storing, and returning rinse water for further use during various phases of a washing process because they take up minimum space within the dishwasher.

Regarding the recitation “for rinsing water for storage and re-use at a later time of at least a part of the rinsing water present in the dishwasher” and “can be matched in size to the volume

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of the liquid”, this recitation is a statement of intended use which does not patentably distinguish over ‘885 since ‘885 meets all the structural elements of the claim(s) and is capable of storing rinsing water for re-use at a later time and matching the bag in size to the volume of the liquid if so desired. See MPEP 2114.

Claim 24: ‘885 and EP ‘348 teach the limitations of claim 22 above. EP ‘348 teaches that the flexible bag can hold varying amounts of water such that the bag can hold the largest volume of liquid likely or planned to be filled in [col. 2, lines 52-55]. Without evidence of unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention to determine the appropriate volume of the bag based on the volume of rinsing liquid likely or planned to be contained into the bag, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Claim 25: ‘885 and EP ‘348 teach the limitations of claim 22 above. ‘885 also teaches a lye pump for pumping away the rinsing water from the dishwasher [(15), Fig. 1], a circulating pump [(3), Fig. 1] for acting on the spray arms [(2), Fig. 2]. Modified ‘885 also teaches the bag can be filled with rinse water via a first rinsing water pipe [(14), Fig. 1] from the lye pump [col. 1, line 60 - col. 2, line 19].

Claim 27: ‘885 and EP ‘348 teach the limitations of claim 25 above. ‘885 also teaches the rinse water is passed from the reservoir via a third rinsing pipe [(12), Fig. 1] for reintroducing

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the rinse water into the dishwasher [col. 2, lines 10-19] which leads from the reservoir into a pump sump [(4), Fig. 1] in a lower areas of the washing container [(1), Fig. 1] [col. 1, line 60 - col. 2, line 19].

Claim 28: '885 and EP '348 teach the limitations of claim 25 above. '885 also teaches that a third rinsing pipe is closed by a shut-off valve [col. 2, lines 18-19].

Claim 32: '885 and EP '348 teach the limitations of claim 22 above. '885 also teaches that the program control unit controls the pumps as well as the shut-off valve [col. 2, lines 28-29 and 35-39].

Claim 33: '885 and EP '348 teach the limitations of claim 22 above. '885 teaches that the reservoir [(11), Fig. 1] is arranged between an outer wall of the dishwasher [see dashed line in Fig. 1] and a side wall of the washing container [(1), Fig. 1].

Claim 35: '885 and EP '348 teach the limitations of claim 22 above. '885 also teaches that the reservoir has at least one opening [where the conduit (14) enters at the top of reservoir (11) in Fig. 1] for introducing rinsing water into a first rinsing pipe .

Claim 38: '885 teaches a method for operating a dishwasher [abstract] comprising a device for storing rinsing water [(11), Fig. 1; col. 2, lines 1-19] that has been removed from a rinsing water circuit [col. 2, lines 1-19] and at the end of a washing process the rinsing water is

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introduced into the flexible bag reservoir before a following rinsing process [col. 2, lines 55-67], the rinse water is then fed back into a the rinsing process from the reservoir [col. 3, lines 2-9].

‘885 does not teach that the device is embodied as a film bag. However, EP ‘348 teaches a similar dishwasher for recovering, storing, and returning rinse water for further use during various phases of a washing process by using a flexible bag as a storage reservoir because using bag-like reservoirs takes up minimum space [Figs. 1 and 2; abstract; col. 1, line 47-55; col. 2, lines 29-39; col. 3, lines 28-31]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flexible bag reservoir taught by EP ‘348 as the reservoir of ‘885 with a reasonable expectation of success because EP ‘348 teaches that it is known to use a flexible bag for recovering, storing, and returning rinse water for further use during various phases of a washing process because they take up minimum space within the dishwasher.

EP ‘348 teaches that the flexible bag can hold varying amounts of water such that the bag can hold the largest volume of liquid likely or planned to be filled in [col. 2, lines 52-55]. Without evidence of unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention to determine the appropriate volume of the bag based on the volume of rinsing liquid likely or planned to be contained into the bag, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

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Claim 39: '885 and EP '348 teach the limitations of claim 38 above. '885 also teaches that the particular program from which the wash liquid can be removed is a rinsing phase [col. 2, lines 40-45] and the washing liquid reintroduced to the cycle from the reservoir can be used in a subsequent pre-wash process [col. 3, lines 3-6]. Refer to claim 38 for the particular path through which the washing liquid flows into the reservoir and back into the washing container.

Claim 40: '885 and EP '348 teach the limitations of claim 38 above. '885 also teaches that the rinsing water is fed back into the water cycle at the beginning of the next cycle and that the operation can occur during at least one rinsing phase which indicates that when it occurs in a second rinse step, this would read on an "intermediate rinse" step [col. 2, lines 40-45].

Claim 42: '885 teaches a method for operating a dishwasher [abstract] comprising a storage reservoir for storing rinsing water [(11), Fig. 1; col. 2, lines 1-19] and at the end of a washing process the rinsing water is introduced into the storage reservoir before a following rinsing process [col. 2, lines 55-67], the rinse water is then fed back into a the rinsing process from the reservoir [col. 3, lines 2-9] and the storage reservoir is filled with filtered water from the circulating pump [(15), Fig. 1; col. 1, line 64; col. 2, lines 10-19] because water flows through a filter [(5), Fig. 1] into the sump [(4), Fig. 1] and then is fed into the reservoir [(11), Fig. 1] via the circulating pump [(15), Fig. 1]. '885 does not teach that the storage reservoir is embodied as a film bag. However, EP '348 teaches a similar dishwasher for recovering, storing, and returning rinse water for further use during various phases of a washing process by using a flexible bag as a storage reservoir because using bag-like reservoirs takes up minimum space

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[Figs. 1 and 2; abstract; col. 1, line 47-55; col. 2, lines 29-39; col. 3, lines 28-31]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flexible bag reservoir taught by EP '348 as the reservoir of '885 with a reasonable expectation of success because EP '348 teaches that it is known to use a flexible bag for recovering, storing, and returning rinse water for further use during various phases of a washing process because they take up minimum space within the dishwasher.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter '885) in view of Tabasso (EP 0546348, hereinafter EP '348), and further in view of Andreae (DE 19835722 - using the English Machine Translation, hereinafter DE '722).

Claim 23: '885 and EP '348 teach the limitations of claim 22 above. EP '348 teaches that the reservoir is bag-like and flexible, but it does not teach that the bag is plastic or metal. However, DE '722 teaches a dishwasher that has containers made from a flexible material such as plastic that are used to hold liquids within a dishwasher [page 1]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the material of the flexible container of DE '722 in the modified apparatus of '885 with a reasonable expectation of success because DE '722 teaches that plastic is a suitable material for a flexible container to hold liquids within a dishwasher.

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Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter '885) in view of Tabasso (EP 0546348, hereinafter EP '348), and further in view of Perry's Chemical Engineering Handbook.

Claim 26: '885 and EP '348 teach the limitations of claim 25 above. '885 also teaches that a single pump may be used along with flow diverter means [reads on "water deflector valve"] to deliver water to the reservoir via the first rinse water pipe [(14), Fig. 1] or to a drain [reads on "waste water pipe"; see "the arrow" in Figure 1, that is the drain] [see col. 3, lines 29-32], and the conduit (6) in Figure 1 reads on "a second rinsing water pipe"]. '885 does not teach a shut-off valve from the lye pump to the reservoir. However, it is notoriously well known to an ordinary artisan in the field of process control engineering to use valves after pumps in order to prevent cavitation in the pump by running the pump dry from liquid as taught by Perry's and that shut-off valves are just one of the options available for valve selection [pages 8-71 through 8-78]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a valve after the pump of modified '885 with a reasonable expectation of success because Perry's teaches it is well known to use shut-off valves to prevent cavitation in pumps.

With respect to the recitation "preferably closed by means of a shut-off valve," it is not positively recited; therefore, it carries no patentable weight. Thus, the claimed limitation is met.

Regarding the recitation "water deflector valve is provided which either opens the first rinsing water pipe when the shut-off valve from the lye pump to the film bag is opened or a second rinsing water pipe from the lye pump to the waste water pipe", this recitation is a statement of intended use which does not patentably distinguish over '885 since '885 meets all

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the structural elements of the claim(s) and is capable of either opening the first rinsing water pipe when the shut-off valve from the lye pump to the film bag is opened or to a second rinsing water pipe from the lye pump to the waste water pipe if so desired. See MPEP 2114.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

“[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

Claims 29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter ‘885) in view of Tabasso (EP 0546348, hereinafter EP ‘348), and further in view of Arreghini et al. (U.S. Patent 5,606,878, hereinafter ‘878).

Claim 29: ‘885 and EP ‘348 teach the limitations of claim 22 above. ‘885 also teaches a lye pump for pumping away the rinsing water from the dishwasher [(15), Fig. 1], a circulating pump [(3), Fig. 1] for acting on the spray arms [(2), Fig. 2] [col. 1, lines 62-64; col. 2, lines 1-19] and that the reservoir can be filled with rinse water via a first rinsing water pipe [(14), Fig. 1] [col. 1, line 60 - col. 2, line 19]. ‘885 teaches filtering the water in a sump that feeds to both the reservoir and the circulating pump [Fig. 1; col. 1, lines 62-64], but it does not teach that the storage reservoir can be filled with filtered rinse water from the circulating pump. However, ‘878 illustrates that it is known to utilize a circulating pump for both a recycle stream as well as for supply into a storage reservoir [(4 – pump), (2 - reservoir), and (15 - recycle stream), Fig. 5; col. 2, lines 36-44; col. 6, lines 17-29]. It is prudent to look at ‘878 since it is in the same field of

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endeavor as '885 that being the storage of rinsing water for reuse in a later cycle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the circulating pump of '885 in the manner disclosed by '878 with a reasonable expectation of success because '878 teaches filling a reservoir with water from the circulating pump. Thus, modified '885 would teach that the water enters the sump and is filtered and is then supplied to the reservoir from the circulation pump.

Claim 37: '885 teaches a dishwasher [abstract] that carries out a washing program from a washing process using rinsing water [col. 1, lines 5-9; col. 2, lines 40-47], comprising a program controller [col. 2, lines 28-29 and 51-54], a washing container [(1), Fig. 1; col. 1, lines 60-62], a system for circulating the rinsing water [(3, 4, 14, 11, 13), Fig. 1; col. 1, line 60 – col. 2, line 19], a storage reservoir [(11), Fig. 1; col. 2, line 4], a lye pump [(7), Fig. 1], and a circulating pump that acts on the arms [(3), Fig. 1; col. 1, lines 62-64].

'885 does not teach that the storage reservoir is embodied as a film bag. However, EP '348 teaches a similar dishwasher for recovering, storing, and returning rinse water for further use during various phases of a washing process by using a flexible bag as a storage reservoir because using bag-like reservoirs takes up minimum space [Figs. 1 and 2; abstract; col. 1, line 47-55; col. 2, lines 29-39; col. 3, lines 28-31]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flexible bag reservoir taught by EP '348 as the reservoir of '885 with a reasonable expectation of success because EP '348 teaches that it is known to use a flexible bag for recovering, storing, and returning rinse water for

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further use during various phases of a washing process because they take up minimum space within the dishwasher.

'885 teaches filtering the water in a sump that feeds to both the reservoir and the circulating pump [Fig. 1; col. 1, lines 62-64], but it does not teach that the storage reservoir can be filled with filtered rinse water from the circulating pump. However, '878 illustrates that it is known to utilize a circulating pump for both a recycle stream as well as for supply into a storage reservoir [(4 – pump), (2 - reservoir), and (15 - recycle stream), Fig. 5; col. 2, lines 36-44; col. 6, lines 17-29]. It is prudent to look at '878 since it is in the same field of endeavor as '885 that being the storage of rinsing water for reuse in a later cycle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the circulating pump of '885 in the manner disclosed by '878 with a reasonable expectation of success because '878 teaches filling a reservoir with water from the circulating pump. Thus, modified '885 would teach that the water enters the sump and is filtered and is then supplied to the reservoir from the circulation pump.

Regarding the recitation “for rinsing water for storage and re-use at a later time of at least a part of the rinsing water present in the dishwasher”, this recitation is a statement of intended use which does not patentably distinguish over '885 since '885 meets all the structural elements of the claim(s) and is capable of storing rinsing water for re-use at a later time if so desired. See MPEP 2114.

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Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter '885) in view of Tabasso (EP 0546348, hereinafter EP '348) in view of Arreghini et al. (U.S. Patent 5,606,878, hereinafter '878) in view of Perry's Chemical Engineering Handbook, and further in view of Thies (U.S. Patent 6,432,216, hereinafter '216).

Claim 30: '885, EP '348 and '878 teach the limitations of claim 29 above. '885, EP '348 and '878 do not teach a shut-off valve on the first rinsing pipe. However, it is notoriously well known to an ordinary artisan in the field of process control engineering to use valves after pumps in order to prevent cavitation in the pump by running the pump dry from liquid as taught by Perry's and that shut-off valves are just one of the options available for valve selection [pages 8-71 through 8-78]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a valve after the pump of modified '885 with a reasonable expectation of success because Perry's teaches it is well known to use shut-off valves to prevent cavitation in pumps.

'885, EP '348, '878 and Perry do not teach a water deflector valve for releasing one, both or none of the spray arms. However, '216 teaches it is known to have a dishwasher with multiple spray arms and to use a deflector valve to divert the liquid between spray arms for cleaning at different portions in the container [col. 2, lines 45-51; col. 4, lines 56-58; col. 5, lines 9-20]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a deflector valve as taught by '216 in modified '885 because '216 teaches it is known to have a dishwasher with multiple spray arms and to use a deflector valve to divert the liquid between spray arms for cleaning at different portions in the container.

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Regarding the recitation “water deflector valve for releasing one, both or none of the spray arms for acting upon with water”, this recitation is a statement of intended use which does not patentably distinguish over modified ‘885 since ‘885 meets all the structural elements of the claim(s) and is capable of releasing one, both or none of the spray arms for acting upon with water if so desired. See MPEP 2114.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

“[A]pparatus claims cover what a device is, not what a device does.” Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter ‘885) in view of Tabasso (EP 0546348, hereinafter EP ‘348), and further in view of Fumagalli (EP 0607628, hereinafter EP ‘628).

Claim 34: ‘885 and EP ‘348 teach the limitations of claim 22 above, but they do not teach that the reservoir is located between a top wall of the dishwasher and a top wall of the washing container. However, EP ‘348 illustrates that it was known to arrange a storage reservoir for the recovery, storage and reuse of washing water for use in a dishwasher between a top wall of the dishwasher and a top wall of the washing container [abstract; Fig. 1]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the arrangement taught by EP ‘628 in place of the arrangement taught by modified ‘885 because EP

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'628 teaches it is a known arrangement for the recovery, storage and reuse of washing water for use in a dishwasher.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter '885) in view of Tabasso (EP 0546348, hereinafter EP '348), in view of Johnston (U.S. Patent 4,518,599, hereinafter '599), and further in view of Nishino et al. (U.S. Patent 3,872,013, hereinafter '013).

Claim 36: '885 and EP '348 do not teach that the film bag is coated on the water-guiding side at least in part with an anti-bacterial agent. However, '599 teaches that antibacterial compounds are useful for controlling harmful effects of microorganisms in water especially in systems which utilize circulating water because the recirculated water can become contaminated [col. 2, lines 36-44], but it does not teach filtering in the reservoir. However, '013 illustrates a filter coating in part a reservoir to inhibit the propagation of bacteria [(24), Fig. 1; col. 1, lines 6-7; col. 2, lines 5-45]. Therefore, it would have been obvious to an ordinary artisan to coat the reservoir with a filter to inhibit the propagation of bacteria [reads on "anti-bacterial agent"] of modified '885 because '599 discloses that microorganisms can contaminate water in systems that use recirculating lines and '013 teaches placing a filter to inhibit the propagation of bacteria within a reservoir.

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Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Centis (U.S. Patent 5,617,885, hereinafter '885) in view of Tabasso (EP 0546348, hereinafter EP '348) as applied to claim 38 above, in view of Arreghini et al. (U.S. Patent 5,606,878, hereinafter '878), in view of Johnston (U.S. Patent 4,518,599, hereinafter '599), and further in view of Nishino et al. (U.S. Patent 3,872,013, hereinafter '013).

Claim 41: '885 and EP '348 teach the limitations of claim 38 above. '885 teaches filtering the water in a sump that feeds to both the reservoir and the circulating pump [Fig. 1; col. 1, lines 62-64], but it does not teach that the storage reservoir can be filled with filtered rinse water from the circulating pump. However, '878 illustrates that it is known to utilize a circulating pump for both a recycle stream as well as for supply into a storage reservoir [(4 – pump), (2 - reservoir), and (15 - recycle stream), Fig. 5; col. 2, lines 36-44; col. 6, lines 17-29]. It is prudent to look at '878 since it is in the same field of endeavor as '885 that being the storage of rinsing water for reuse in a later cycle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the circulating pump of '885 in the manner disclosed by '878 with a reasonable expectation of success because '878 teaches filling a reservoir with water from the circulating pump. Thus, modified '885 would teach that the water enters the sump and is filtered and is then supplied to the reservoir from the circulation pump.

'885, EP '348 and '878 do not teach that rinse water is filtered in the film bag. However, '599 teaches that antibacterial compounds are useful for controlling harmful effects of microorganisms in water especially in systems which utilize circulating water because the recirculated water can become contaminated [col. 2, lines 36-44], but it does not teach filtering in

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the reservoir. However, '013 illustrates a filter present within a reservoir to inhibit the propagation of bacteria [Fig. 1; col. 1, lines 6-7; col. 2, lines 5-45]. Therefore, it would have been obvious to an ordinary artisan to filter the water within the reservoir of modified '885 because '599 discloses that microorganisms can contaminate water in systems that use recirculating lines and '013 teaches placing a filter to inhibit the propagation of bacteria within a reservoir.

Allowable Subject Matter

Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as well making sure all antecedent basis issues are resolved.

The following is a statement of reasons for the indication of allowable subject matter: '885 teaches a dishwasher [abstract] that carries out a washing program from a washing process using rinsing water, comprising a program controller, a washing container, a system for circulating the rinsing water, and a storage reservoir. '885 also teaches a lye pump for pumping away the rinsing water from the dishwasher, a circulating pump for acting on the spray arms and that the reservoir can be filled with rinse water via a first rinsing water pipe. '885 teaches filtering the water in a sump that feeds to both the reservoir and the circulating pump, but it does not teach that the storage reservoir can be filled with filtered rinse water from the circulating pump. However, '878 illustrates that it is known to utilize a circulating pump for both a recycle stream as well as for supply into a storage reservoir. It is prudent to look at '878 since it is in the same field of endeavor as '885 that being the storage of rinsing water for reuse in a later cycle.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the circulating pump of '885 in the manner disclosed by '878 with a reasonable expectation of success because '878 teaches filling a reservoir with water from the circulating pump. Thus, modified '885 would teach that the water enters the sump and is filtered and is then supplied to the reservoir from the circulation pump.

'885 and '878 fail to teach that rinse water that is fed into the reservoir via the recirculation pump is also reintroduced into the washing process by shutting off the recirculating pump so that the rinse liquid can flow from the reservoir into the recirculation pump and then into a pump sump. The search conducted by the examiner has not indicated more relevant documents. Thus, the art of record does not fairly teach or suggest that rinse water that is fed into the reservoir via the recirculation pump is also reintroduced into the washing process by shutting off the recirculating pump so that the rinse liquid can flow from the reservoir into the recirculation pump and then into a pump sump.

(10) Response to Argument

Regarding claims 22, 24, 25, 27, 28, 32, 33, 38-40 and 42

In response to appellants' arguments regarding Centis and Tabasso, the Examiner does not find them persuasive. Appellants' state that Centis teaches away from the present invention and that one of skill in the art would not look to Tabasso for a flexible reservoir for use in the Centis dishwasher. Centis teaches a dishwasher that utilizes a storage reservoir, but it does not teach that the storage reservoir is a flexible bag. Tabasso teaches a dishwasher that utilizes a flexible bag as a storage reservoir because using bag-like reservoirs takes up minimum space

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within the dishwasher and that the flexible reservoirs are adapted to recover, store and return to further use the liquor used during various phases of a washing process [see abstract]. Thus, Tabasso does in fact teach that the bags are for use as part of the water supply system. Because both Centis and Tabasso teach dishwashers that contain a storage reservoir, it would have been obvious to one of ordinary skill in the art to substitute one container for the other to achieve the predictable result of holding liquid.

In response to appellants' arguments regarding Tabasso as non-analogous art, the Examiner respectfully disagrees. Tabasso is directed to a dishwasher. Therefore, Tabasso is reasonably pertinent because it is in the same field of endeavor which the inventor is concerned, namely storing liquids within a dishwasher. Tabasso discloses a conventional dishwasher for recovering, storing, and returning rinse water for further use during various phase of a washing process by using a flexible bag as a storage reservoir because using bag-like reservoirs takes up minimum space. The Examiners reliance upon Tabasso's flexible storage reservoir is the epitome of what one of ordinary skill in the art would do. An ordinary artisan would look to storage means within the same area. This is exactly what the Examiner has done in the instant case. It would have been obvious to use the flexible bag reservoir of Tabasso as the means of storing water in the dishwasher of Centis because Tabasso teaches that it is known to use a flexible bag for recovering, storing, and returning rinse water for further use during various phases of a washing process because they take up minimum space within the dishwasher. Thus, Tabasso is analogous art and satisfies the requirement for use as prior art because it is with the same field of endeavor which the inventor is concerned.

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In response to appellants' argument that Tabasso bags are for use in a parallel manner, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Appellants' also draw the examiners attention to two foreign patents cited in Centis. The examiner would like to point out that these references are located in the background section and are not mentioned in the Centis reference to disclose the dishwasher structure as the two foreign patents are directed to washing machines. Even though the two foreign patents state that a parallel structure is not preferred, this does not take away from the fact that it is still known to use storage reservoirs within dishwashers. Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments. In *re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). See MPEP 2123. Furthermore, claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In *re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Nicole Blan/

Examiner, Art Unit 1712

Conferees:

/Anthony McFarlane/
Primary Examiner

/Michael Kornakov/

Supervisory Patent Examiner, Art Unit 1714